IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.46068 OF 2002
AND
WPMP.NO.67115 OF 2002
and
WVMP.NO.135 OF 2003

Sriram Educational Trust,
rep. by its Chairman .. Petitioner

-Vs-

The President,
89, Perumalpattu Panchayat Union,
Thiruvallur. .. Respondent

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.T.V. Ramanujam
Senior counsel for
Mr.T.V. Krishnamachari
For Respondent : Mr.J. Thilagaraj

:J U D G M E N T

The case put forth by the petitioner is as follows:
Petitioner is an educational Trust, which is running various educational institutions in Perumalapattu village, within the respondent Panchayat Union in Tiruvallur District. It has constructed several buildings for the purpose of running the classes for the educational institutions, hostels, laboratories and for other purposes in connection with running of the educational institutions. The respondent Panchayat issued a notice dated 19.2.2001 claiming that the Panchayat Union is assessing property tax for the buildings. At that stage, the petitioner had filed O.S.No.85 of 2001 for injunction and an interim order of injunction was passed. Subsequently, a further notice had been issued by the respondent giving rise to filing of O.S.No.270 of 2001 against the present respondent as well as other officials such as the Deputy Director of Rural Development and the District Collector for injunction. However, subsequently the Advocate who had conducting the suit had expired, both the suits were dismissed for default. While the matter

stood thus, the respondent has served impugned proceedings dated 9.12.2002 claiming that the petitioner should pay a sum of Rs.72,16,920/- as tax for the period from 1985 to 2003. The aforesaid proceedings is being challenged in the present writ petition.

2. It is the contention of the petitioner that as per Rule 15(c) of the Tamil Nadu Panchayat (Assessment and collection taxes Rules) Rules, 1999 framed in exercise of the power conferred under Sections 171,172,174,176 and 242(1) of the Tamil Nadu Panchayat Act, 1994, buildings used for educational purpose, including hostels, libraries, which are open to the public are exempted from house tax. It is submitted in alternative that even if tax is payable, the impugned proceedings to collect taxes from 1985 to 2003 is barred by limitation.

3. On behalf of the respondent, a petition for vacating the stay has been filed and in the said petition, the contentions raised in the writ petition have been refuted.

4. The entire writ petition was heard on merit while considering the question of vacating the order of stay.

5. Section 172 of the Tamil Nadu Panchayats Act empowers the Panchayat to levy house tax. Section 172(4) empowers the Government to make Rules, which being relevant is extracted hereunder :

 172 (4) The Government may make rules providing for-

(a) the persons who shall be liable to pay the tax and the giving of notices of transfer of houses;

(b) the grant of vacancy and other remissions;

(c) the circumstances in which, and the condition subject to which, houses constructed, reconstructed or demolished, or situated in areas included in, or excluded from the panchayat village during any half-year or year, shall be liable or cease to be liable to the whole or any portion of the tax.

6. It is not disputed that the Tamil Nadu Panchayat (Assessment and collection taxes Rules) Rules, 1999 have been framed pursuant to aforesaid provision. Learned counsel for the petitioner has relied upon Rule 15, particularly Rule 15(c) and claimed exemption on the ground that the buildings used for educational purpose or for library purpose are not liable to be assessed to the house tax. The provisions contained in Rule 15(c) are quoted hereunder :
 15. Exemption of specified classes of houses from house-tax. -
(a)....

(b)....

(c) buildings used for educational purposes including hostels and libraries which are open to the public, and public buildings used for charitable purpose of sheltering the destitutes or animals.

(d) to (k) . . .

Provided that nothing contained in clauses (a) and (c) shall be deemed to exempt from house-tax if any building for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses:

Provided further that education institution (not commercial in nature) exempted from levy of house-tax, immediately before the commencement of the Act shall continue to be exempted under the said Act.
Explanation.- The exemption granted under this rule shall not extend to residential quarters attached to schools or colleges not being the hostels or residential quarters attached to hospitals, dispensaries and libraries.

7. It is the contention of the petitioner that since the hostels and libraries are open to public, as per clause (c) of Rule 15, no house tax is payable. A reading of the entire provisions make it clear that the intention is to exempt charitable organisations which are running such hostels or libraries or shelters for animals. Where, however the persons using the hostels and libraries are paying rent, it cannot be said that tax is not leviable. The intention seems to be for the benefit of the charitable organisations and not for the organisations which are collecting money for particular use.

8. Learned counsel for the petitioner has relied upon the decision of this Court reported in 1992 MLJ 381 (NEPCO SCHLENK ENGINEERING COLLEGE, SIVAKASI v. THE PRESIDENT, KERISERI PANCHAYAT AND OTHERS). The question related to notices issued regarding two hostels and one canteen for the purpose of determining the property tax for the year 1989-90 under the Tamil Nadu Panchayats Act, 1958. Under the relevant Rules then applicable, it was provided :

Provided that nothing contained in Clauses (a)(c) and (e) shall be deemed to exempt house-tax any building for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses.

Provided further that buildings used for educational purposes including hostels owned and run for such purpose irrespective of the fact whether any rent is payable by the person or persons using the same for educational purposes or not, shall be exempt from tax.

9.While considering the aforesaid provisions, it was observed:

 The second proviso is mandatory in its terms and even if the educational agency of the management of the institution charges rent for the occupation of the hostels from the occupants thereof, the buildings are exempt from property tax. Hence the demand made by the first respondent on the petitioner for payment of tax as well as for production of certificate of valuation with respect to the two hostel buildings is unsustainable an they have to be quashed.

10. It has to be seen that under the new provisions, the second proviso upon which reliance had been placed in the decision has now been deleted. Therefore, the aforesaid decision would no longer be applicable in view of the relevant provisions contained in the present Rules.

11. Even though the main contention regarding total exemption is not justified in view of the changed Rules, the contention to the effect that demand for payment of house tax for the entire period, i.e., 1 985 to 2003, appears to be unjustified. The decision of Justice M. Srinivasan, as His Lordship then was, cited supra, was obviously applicable to the present institution under the old Act. Even though the old Act was replaced in the year 1994, the savings clause and the Rules made under the old Act continue to remain in force and the Rules under the new Act,were only framed in 1999. Therefore, till the new Rules were framed in 1999, in view of the earlier decision reported above, there was no liability to pay tax, even though the educational agency was charging rent from the occupants of the hostel. The second proviso now incorporated however cannot come to aid of the petitioner as the proviso itself indicates that only if any organisation was being run on charitable basis, such exemption would continue. In the present case, it is not the case of the petitioner that the trust is running the educational institution on charitable basis.

12. Now that the position has been clarified, there shall be assessment in respect of the liability subsequent to the enforcement of Tamil Nadu Panchayat (Assessment and collection of taxes Rules) Rules, 1999 and thereafter it would be open to the respondent to collect tax in accordance with the Rules.

13. For the aforesaid reasons, the writ petition is allowed in part. It is made clear that the petitioner is liable to pay tax with effect from the enforcement of Tamil Nadu Panchayat (Assessment and collection of taxes Rules) Rules, 1999 and there is no liability to pay tax for the earlier period. No costs.

To

The President,
89, Perumalpattu Panchayat Union,
Thiruvallur.

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